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2 Including Professional Corporations  
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6 Attorneys for Creditors  
Larry Sacks and Linda Sacks (as Trustees)  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **LOS ANGELES DIVISION**  
11

12 In re

13 BAY AREA FINANCIAL  
CORPORATION,

14 Debtor and Debtor in Possession.  
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Case No. 2:13-bk-38974-TD

Chapter 11

**STATEMENT OF POSITION OF  
CREDITORS LARRY SACKS AND  
LINDA SACKS (AS TRUSTEES) TO  
EMERGENCY MOTION (1)  
APPROVING McCAULEY PAYOFF;  
AND (2) ESTABLISHING  
PROCEDURES FOR COMPROMISES**

**Hearing**

Date: December 11, 2013  
Time: 10:00 a.m.  
Ctrm: 1345  
255 East Temple Street  
Los Angeles, CA 90012

1 Creditors Larry and Linda Sacks, in their capacity as trustees of the Sacks Family  
2 Trust ("Sacks Trust"), respectfully submit this Statement of Position in response to the  
3 Debtor's Emergency Motion ("Motion") for Approval of Compromise and Establishing  
4 Procedures for Compromises.

5  
6 **I.**

7 **NO OBJECTION TO McCAULEY COMPROMISE**  
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9 The Sacks Trust does not object to the proposed compromise of the promissory note  
10 of Michael C. McCauley. The declarations supporting the Motion appear to reflect the  
11 exercise of the Debtor's reasonable business judgment.  
12

13 **II.**

14 **FUTURE COMPROMISES SHOULD AT LEAST REQUIRE SOME**  
15 **"NEGATIVE NOTICE" TO THE CREDITORS COMMITTEE TO**  
16 **REVIEW THE BASIS FOR THE COMPROMISE**  
17

18 Debtor seeks authority to write off up to 20% of principal and interest, and to  
19 reduce interest rates by up to 4%, with no creditor oversight. There will be a creditors  
20 committee in this case, and one duty of the committee will be to provide guidance and  
21 advice as to compromises that may materially reduce loan balances.  
22

23 The Sacks Trust submits that, at a minimum, the Debtors should give the committee  
24 five (5) business days' notice of a proposed compromise, supported by information  
25 supporting the compromise. Such information might include the relevant loan history,  
26 property valuation information, and any narrative supporting the Debtor's business  
27 judgment. If the committee or U.S. Trustee does not object, then the Debtor could proceed  
28

1 to consummate the arrangement. The objective would not be to increase costs or cause  
2 delays, but to allow the committee to perform its duty of oversight.

3  
4 Alternatively, the Debtor's emergency request for blanket authority should be  
5 deferred until a committee is appointed. The committee and Debtor likely could agree to a  
6 different approach, so long as it satisfies the committee's duties to other creditors.

7  
8 Dated: December 10, 2013

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

10  
11 By /s/ Richard W. Brunette  
12 RICHARD W. BRUNETTE

13 Attorneys for Creditors  
14 Larry Sacks and Linda Sacks (as Trustees)

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422**

A true and correct copy of the foregoing document entitled (*specify*): **STATEMENT OF POSITION OF CREDITORS  
LARRY SACKS AND LINDA SACKS (AS TRUSTEES) TO EMERGENCY MOTION (1) APPROVING McCAULEY  
PAYOFF; AND (2) ESTABLISHING PROCEDURES FOR COMPROMISES**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **December 10, 2013**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Michael Jay Berger** michael.berger@bankruptcypower.com, yathida.nipha@bankruptcypower.com
- **Sandford Frey** Sfrey@cmkllp.com
- **Queenie K Ng** queenie.k.ng@usdoj.gov
- **Richard W Brunette** rbrunette@sheppardmullin.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) **December 10, 2013**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Debtor**

Bay Area Financial Corporation  
12400 Wilshire Blvd, Ste 230  
Los Angeles, CA 90025

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **December 10, 2013**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

***Judge's Copy***

U.S. Bankruptcy Court **(By Overnight Mail)**  
Hon. Thomas Donovan  
255 E. Temple Street  
Los Angeles, CA 90012

Kim R. Gundlach **(By Email)**  
kgundlach@cmklp.com

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 10, 2013  
*Date*

Virginia La Monica  
*Printed Name*

/s/ Virginia La Monica  
*Signature*